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A DISCOURSE

ON

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THE COVENANT WITH JUDAS,

PREACHED IN

B

HOLLIS-STREET CHURCH, NOV. 6, 1842.

By JOHN PIERPONT.

BOSTON:
CHARLES C. LITTLE AND JAMES BROWN.
1842.

Dupr. in spkr. v.

(26264)

Estate of D. E. Sewall.

Apr. 29, 1891

NOTE.

That part of this Discourse, which was preached in the morning, was fully written out; and is printed as it was delivered. The part, preached in the afternoon, was delivered chiefly from notes; and though, in preparing it for the press, I have followed, as closely as I could, the train of thought and argument, I pretend not to give the language as spoken.

J. P.

DISCOURSE.

MATTHEW XXVI. 15.

They covenanted with him for thirty pieces of silver.

IT is not my object, in the present discourse, to treat of, or attempt to measure, the guilt of that unworthy disciple of the Lord Jesus, whose covenant to betray his Master, as well as the consideration of that covenant, is stated in these words. Nor yet do I propose to inquire what could have been the motive of a disciple who, like Judas, had had a more than ordinary trust reposed in him by his Master and his fellow disciples, to prove false to that trust, and deliver him by whom he had been treated with such confidence, into the hands of those who were seeking his life. But I take, rather, this statement of a particular covenant, to do an act of acknowledged baseness and iniquity, as an occasion of considering the general question of the binding force or obligation of all agreements, contracts, promises, vows or oaths, to do that which is a violation of natural right, and which, were there no such solemn engagement, would be acknowledged to be wrong.

This subject appears to me to be especially pertinent to the present occasion, when, at the Communion table, we are called to commemorate the death of one man, who was given up, or betrayed to those who were hunting after his life, by virtue of a

covenant that he should be thus betrayed; and when, at the same time, our city is moved by the spectacle of another man, that is to be given up or betrayed to perpetual and hopeless bondage, if not to a cruel death, by virtue of a covenant that he shall be thus betrayed.

The essential morality of these two covenants is the same. The one was a covenant to give up an innocent man to death, in consideration of thirty pieces of silver. The other is a covenant to give up an innocent man to a bondage worse than death, in consideration of certain real or supposed political advantages, from which the covenanting parties expect to make *more* than thirty pieces of silver. Thus we see that, although there may be some difference in the *consideration* of the two covenants, by which, in one case the *life*, and, in the other the *liberty* of a man is to be sacrificed, the *essential morality* in both cases is precisely the same: both of them being to do an act which is a violation of a natural right; in the *one* case the natural right of a man to his *life;* and in the *other*, his natural right to his *liberty.* And, as every violation of a right is a wrong, a sin, a transgression of the moral law of God, each of these covenants comes, alike, under the cognizance of the Christian teacher, whose province it is to lift up his voice against wrong — 'to show his people *their* sins,' as a means of effecting the great work for which God, having raised up his son Jesus, sent him to bless us, by by turning every one of us away from his iniquities. And I deem such a subject of discourse, — useful as it must be at all times, — especially seasonable, at a time when the consequences of a covenant to do a wrong are brought so forcibly and so formidably before us as they are in the case already alluded to; — and I deem no day too holy — no Christian rites too sacred — to have this great question of Christian — nay, of universal — morality, thought of and spoken of, in connexion with it.

This morning, then, I propose to take up and consider the general question of the obligation, or binding force, in the *forum of conscience*, and at the bar of God, of all covenants, engagements, compacts, vows, promises or oaths, to do that, which, without such oath, promise or covenant, is confessedly wrong: — and, in the afternoon I propose to apply the general principle at which we may arrive, to several cases of oaths or covenants of this kind, which occur in the sacred history; and especially to the case now occurring in this community, of a fugitive slave, now in a Massachusetts prison, by order or direction of a citizen of Virginia, who claims him as his property.

The idea seems to have prevailed, in all nations, and ages that vows, or promises made with the solemnity of a direct invocation of the name of the Supreme Power, and under the penal sanctions of religion, impose an extraordinary obligation; and the opinion has been widely extended that such vows cannot, under any circumstances, be broken, without incurring guilt, of peculiar enormity, and deserving a corresponding severity of punishment.

To the diligent reader of the sacred volume, espeeially, cases of vows will occur, which seem to have involved the parties making them in great embarrassment, and to have been, to them or to others, the occasion of guilt or suffering, which way soever the person making them might turn himself. The vow of Jephtha, that he would offer, as a burnt offering unto the Lord, whatsoever should come forth from the doors of his house to meet him, returning in peace from the slaughter of the children of Ammon;* — that of the Jews residing in Egypt in the days of Jeremiah, that they would burn incense to the queen of heaven and pour out drink offerings unto her;† — that of Herod, who promised with an oath, to the daughter of Herodias, that he would give her whatsoever she should ask, even to the half of his

* Judges xi. 30, 31. † Jeremiah xliv. 17, 25.

kingdom ;* — that of the Jews, who bound themselves with an oath, that they would neither eat nor drink till they had slain Paul ;† — and the promise or covenant of Judas, that he would betray his Master to those who were thirsting for his blood,‡ — all prove to us that oaths, or solemn obligations, to do that which is either of questionable right, or of unquestionable wrong, are not things of recent origin : — and when the same diligent reader of the sacred oracles finds, among those oracles, language like the following, — 'If a man vow a vow unto the Lord, or swear an oath to bind his soul with a bond, he shall not break his word ; he shall do according to all that proceedeth out of his mouth' § — 'Thou shalt perform unto the Lord thy vows' ‖ — 'He shall dwell on thy holy hill' — 'who sweareth to his own hurt and changeth not' ¶ — it is not very wonderful, that questions, relating to the binding force of such vows, should be regarded as those that are attended with difficulty, or as those that are worthy of serious consideration, and of public discussion by such as come up into the house of God with an earnest desire to know what is his will, and how they may practically conform themselves to it.

Of all the various forms of engagement which I have named, an *oath* is probably regarded as the most solemn and binding. Let us first see, then, what is the obligation of an *oath* to do wrong : for if that is not binding, it will probably be admitted that no other engagement can be.

An oath, or a vow, may be defined to be *a promise, made with the solemnities and sanctions of religion, to do, or not to do a specific thing.*

The question is, What obligation is created, and imposed by such a promise ? This question, it is obvious, cannot be answered without first asking, what are the obligations under

* Matthew xiv. 8. † Acts xxiii. 12, 14, 21. ‡ Matt. xxvi. 15.
§ Numbers xxx. 2. ‖ Matthew v. 33. ¶ Psalms xv. 1. 4.

which the promising party previously lay, to do, or not to do the thing that he has sworn: and, in as much as our obligations, or duties, result altogether from the relations in which we stand to other beings, some of which relations we voluntarily take upon ourselves, and others are cast upon us without our act, or the consent of our own will, there is, in every case of this nature, a question still antecedent to that of our duties or obligations — viz: What are the relations in which we stand to other beings? Now all those relations that are cast upon us, or in which we find ourselves placed without our own act or choice, bring with themselves their specific duties, which we may no more refuse to perform, than we may refuse to stand in the relations, out of which they grow. The filial relation, or the relation of a child to a parent, is of this class: so also the fraternal relation, or the relation of brother and sister, in the family. It does not depend upon my will, act or choice, whether I will be the child of my parents, or the brother of their other children. I may not say, I am their child, or their brother no longer: and, as I cannot withdraw myself from either of these relations, I cannot withdraw myself, without guilt, from those duties which God has inseparably connected with them. By the high ordinances of the Most High, I am bound to these, his creatures, by a chain which I cannot break and cannot throw off. By this chain I am bound to show obedience to my parents, in my childhood, in respect to every command which they have a right to give me, and to show them reverence and an affectionate deference, so long as they live.

Now, what if I make a vow unto the Lord. that I *will* thus treat my parents? Is any new obligation created, any additional force given to the pre-existing obligation that was upon me, to obey or revere my parents? Most obviously not. The command of God, that I should honor my father and my mother,

was anterior to my vow that I would honor them. The precept, 'Children, obey your parents,' was anterior, and the reason of that precept, 'for this is right,' has existed, as long as the relation of parent and child has existed among the creatures of God. No new weight is given to the obligation by my vow; for it was upon me before, with all the weight that Divine authority could give it; and its weight, therefore, cannot be enhanced. If, indeed, I distrust my own resolutions to discharge my duties to my parents, or if I have been so inconsiderate, or so thankless, as to make no such resolutions, I may, perhaps, in the secrecy of my own mind, or under the solemnities of a public oath, promise that I will hereafter perform the duties that I have heretofore neglected. But, in such a case, my vow creates no new obligation. I may use it, as I may use any other means of virtue, — the example, or the exhortations, or the rebukes of others, or the suggestions of my own conscience, or a fearful looking for of judgement, — to break in upon my habitual thoughtlessness, or to give strength to my weak resolutions, and to help me thus to do what, without my vow, I ought to have done; and what, should I continue to neglect it, I shall suffer for not doing. It is upon this ground that, as members of a Christian church, we *covenant* with each other that, at certain times, or under certain circumstances, we will unite in commemorating the love, life and death of our Saviour, Jesus Christ, in the rite of 'the Lord's supper.' Our obligation to cherish a reverent and grateful remembrance of Him who has given us an immortal hope, and is calling us to glory in calling us to virtue, is not *created* — is not, in the least, affected by this our covenant. That obligation is contemporaneous with our relation to Jesus as his disciples. It grows out of that relation, and must last as long as the relation itself lasts. By our covenant we may strengthen our purposes of meeting this obligation, and, so far as it can ever be discharged, of

discharging it. And that may be a good reason for our entering into the church covenant. It may help us meet an old obligation, but it creates no new one. The Temperance *Pledge* stands upon precisely the same ground. It lays me under no new obligation, though it may help me to discharge an old one; for the obligation to 'live soberly, in the present evil world,' has lain upon me, from the first, and will do so to the last day of my life. I did not voluntarily assume the obligation. It was cast upon me by the Maker of my frame, and I cannot cast it off. Experience shows that the pledge, which is of the nature of a vow, or oath, has, in multitudes of cases, been one, among the means of redeeming the poor slave of an evil habit from his thraldom; and if he breaks it after having taken it, he adds sin to sin, and thus doubly wrongs his own soul; but, neither by subscribing a pledge does he bind himself to be temperate, nor by erasing his name, does he loose himself from the cords with which the hand of God has bound him. My vow, in short, may help my virtue, but does not strengthen, or in the least degree affect, my obligation.

There is another class of relations, which are voluntarily assumed or entered into, and which, under certain circumstances, may be assumed or declined, according to the choice or pleasure of the individual. The conjugal relation is of this kind. As a general rule, it is a duty, at a proper season, to enter into this relation. But there are many exceptions to this general rule. The case of Paul, not to press the higher one of his Master, was of this character; and there are, in all ages and countries, other cases, in which a person is free to marry or not to marry, according to his convictions of duty or propriety, the circumstances of his particular case being duly considered; in other words, in which he may innocently marry or not, as he shall choose. But, having once determined to marry, and having entered into

the conjugal relation, he is not free to choose whether he will discharge or neglect the duties of that relation. He is then bound; — bound, not by his *marriage vows*, or by any vow after his marriage, but bound by the very nature of the relation into which he has chosen to enter. Having put on the relation of husband, he cannot, at his pleasure, put on or put off the obligations which belong to the character, that he has assumed. So long as he stands in that relation, he is a debtor to it, and must perform his relative duties as faithfully, and by refusing to perform them he incurs as deep a stain of guilt, as if the relation had been cast upon him by the act of God, without his own co-operation or consent.

So, too, from the moment that one stands in the relation of parent, although, to a certain extent, that relation may have been voluntarily assumed, the person standing in it is under bonds which can be neither strengthened nor weakened by any vow, to meet the claims of duty that are urged upon the parent's heart, by the voice of the child, and by the voice of conscience, and of God, that comes with the child, to ensure for its helplessness defence, and instruction for it in its ignorance. And, to all the other creatures of God, that fall within the compass of our influence or regards, we hold certain specific relations, every one of which has duties or obligations connected with it, varying in their nature so as to correspond, in every instance, with the relation from which they spring, and alike above and beyond the control of him who is bound by them: — a truth intimated by the force of the very language used in treating of oligations: — for is it not absurd to say of a man that he is *bound*, by a cord that he can tie or untie at his pleasure?

To the Author of our being we are all related, as his creatures, his children, his subjects, his dependants. These various relations, existing from the first, and enduring to the last moment that

we exist, are the source of obligations equally enduring; and as these relations are cast upon us absolutely, without our own co-operation or choice, so the duties or obligations that result from them are absolute and beyond our control. To our constant Benefactor we owe gratitude for the past and trust for the time to come: — to our Supreme Ruler, allegiance which cannot be withheld without sin. And these, our obligations to be thankful and obedient, we cannot strengthen — we can give them no new force — by any vow, that we *will* thank and obey him. His own irrefragable bonds are upon us, from the first moment that we knew him, and were acquainted with the relations in which we stand to him, and in which he stands to us; and we can make those bonds no stronger by any labors of our own, though we lift up our weak hands, in oaths or imprecations, at the horns of his altar, or at the footstool of his throne. Here, indeed, as in cases already stated, we may seek help for the infirmity of our own purposes of obedience, in vows or oaths that we will obey; we may awaken our dormant gratitude, by solemn engagements in his presence that we will, in all things, render him the thanks that are due for his benefits, and the obedience due to him as our Sovereign, for the wisdom and perfectness of his laws. But, by these our vows, we affect not our obligations. We assume no new ones, and we discharge no old ones. True, we may perform our vows; and, when we vow unto the Lord, we should perform our vows: but, in no such case does the vow give to God a new claim upon our hearts or our efforts, nor does it lay us under any new obligation. Those claims grow out of God's benefits, and are as constant as the blessings from which they spring. Those obligations already exist, and are as strong as is the right hand that is stretched out to uphold us.

We are, moreover, in a strictly literal sense, related to ourselves; in as much as our own moral conduct, in all its bearings

and consequences, is, by the unchanging principles of our own constitution, and of God's moral government, *brought back*, or *re-lated* to ourselves. Our moral condition, or the state of our moral feelings, has constant *reference*, or *relation* to our moral acts, so far as we have, ourselves, been the subjects of them. In perfect harmony with this constitution of our nature, the Great Being who thus constituted it, having a desire to the work of his hand, and a regard for its well being, has given us commands, or laid us under obligations, to do nothing to ourselves by which our own well being shall be endangered or destroyed. By his ordinances he has hedged us in, upon the right and left, that we stray not from our own peace. He has laid us under obligation, — and that without consulting us, or asking our consent — to live soberly, temperately, purely, regarding ourselves as the servants of God, who are bound to minister to him with clean hands; or as temples of God, which ought always to stand before him 'in the beauty of holiness.' Now, our obligations to be thus holy are not of our assuming. They are laid upon us by our Maker's hand, in all the weight which he sees necessary to the well balancing, and to the setting in motion, of the exquisite moral machinery by which the good of his creatures is wrought out. Our promises that we will meet and discharge these obligations give them no new weight, with whatever solemnities those promises are made. No vow can draw closer the cords by which we are bound. An Almighty hand has adjusted these, and put them out of the reach of all other hands, as entirely as he has, the cords that hold the planets in their place, as they whirl in their everlasting orbits. We can add nothing to their strength, — nothing to their sacredness, — nothing to their duration.

Can we break them, then, by our word! Can we shake them off by our oath that we *will* shake them off! Can we cast off the cords of the Almighty merely by swearing that we will no

longer follow his guidance? — If we must answer these questions in the negative, — and can it be doubted that we must? — are we not furnished with a ready and conclusive answer to the question, What is the binding force, or obligation, of those vows or oaths, by which men, in all ages, have sought to bind themselves, to a violation or breach of the laws of God? — The government of God is not one which we have ordained, each for himself, and which, therefore, each for himself can annul or throw off at his pleasure. We are not free to choose whether we will come under, or remain under his laws, or not. As we did not enact, we cannot repeal them; as we did not ordain, we cannot annul them. By his law we are bound to tell the truth, before we can bind ourselves by an oath that we will tell a falsehood. The hand of the Most High had laid us under an obligation, attended by fearful sanctions, to do our brother good, long before we thought of binding ourselves, under penalty of a great curse, to do him evil. His obligations, then, are prior and paramount to those under which we may seek to lay ourselves, in opposition to them; — unless, indeed, we are ready to take the ground that our authority over God's laws is higher than his own. To what an absurdity, indeed, should we be reduced, — to say nothing of the tremendous anarchy, — by admitting the doctrine that a man is excusable in breaking a law of God, — nay, that he ought to break it, because he has bound himself by an oath that he will break it! — that he may, or must, refuse to obey a commandment of the Most High, if once the oath of the Most High is upon him that he will not obey it! The whole code of the divine laws might thus be easily repealed, as to their bearing, and their binding force, upon any individual; and he might innocently break them all, merely because he had impiously sworn that he would break them all!

By the course of our reasoning, from the ground assumed, as

well as by the reduction to an absurdity which comes from assuming an opposite ground, we are brought to this conclusion: — that all engagements, promises, covenants, vows or oaths to do a thing which is contrary to any one of the laws of God, or not to do a thing which any one of his laws requires, are utterly null, and void of binding force: — that a vow, even, to do what the law of God requires, creates no new obligation; and therefore, for a stronger reason, an oath not to do what it requires, or to do what it forbids, annuls no obligation that existed before: — that a man, so far from being justified or excused in doing wrong, by an oath which he has taken, that he will do wrong, is involved, by that oath in still deeper guilt, since, by that very oath, he gives evidence of acting deliberately and with premeditation, and adds to the sin of violating God's law, the effrontery of swearing, in the presence of God, that he will violate it. He commits one sin in taking the oath, and another and still a greater sin in keeping it. And this I therefore venture to lay down as a general — nay, as a universal principle; that no vow or oath, to do that which is forbidden by any law of God, or not to do that which is required, is of any binding force, or imposes any obligation whatever; let the solemnities of the oath be as awful, and let the penalties imprecated with it, at the hand of either man or God, be as severe or as fearful as they may.

Before proceeding, as I proposed, to apply this great principle of morality to the several cases which occur in the sacred writings, and in the ordinary course of affairs at the present day, of vows oaths or covenants to do that which, without such engagement, would be confessedly wrong; I must advert to a few passages in the Scriptures, which, at first view, seem to inculcate the doctrine that all vows are obligatory, at all events.

To the questions, 'Who shall abide in thy tabernacle? Who shall dwell in thy holy hill?' the psalmist replies, — among others, 'He that sweareth to his own hurt, and changeth not.'* This is well; nor does it conflict with the general principle already established. To swear to one's own *hurt* does not even imply that he sweareth in his own *wrong*. Where there is a good *consideration* for a promise, covenant, or oath, or even where there is not a corrupt or bad consideration, a man *is* bound by his oath, or other engagement, even though it be to his own hurt; — to his loss of personal ease or comfort, his loss of fortune, friends, or the estimation of those whose good opinion he most values. Nay, he may give his body to be burned, rather than prove false to his oath of allegiance to his earthly sovereign, or to his Lord and Saviour Jesus Christ.

'He fears to change the thing he swears,
Whatever *pain* or *loss* he bears.'

But he may not even take an oath, and, for a stronger reason, he may not perform one, that is itself an act, or that binds him to do an act, in derogation of his fealty to God.

Again, it is said,† 'If a man vow a vow unto the Lord, or swear an oath, to bind his soul with a bond, he shall not break his word: he shall do all that proceedeth out of his mouth.' But there is no reason to suppose that the oath, here intended, is to do an act, in itself wrong. Indeed, the contrary is implied; for the oath in supposition is one *unto* the Lord, and not one *against* him. Besides, Moses, in immediate connexion with the text just cited, goes on to provide, in the case of oaths taken by women, that if the woman be unmarried and living in her father's house, if the father disapprove the oath, it is null and void; as it is, also, if the woman be married, and her oath be disapproved by her husband. In each of these cases, 'not any of her vows, or

* Psalms xv. 4. † Numbers xxx. 2.

of her bonds, wherewith she hath bound her soul, shall stand.' The Lord shall forgive her, because her father or her husband disallowed her. Can we doubt that God, the universal Father, will annul a vow that he disapproves of, when he gives a human father authority to annul a vow of which *he* disapproves?

Let us now look at some of the cases, that occur in the sacred history, of vows to do a wrong, by violating a natural right.

1. The case of Jephtha* is of this kind; — the case brought so near to the hearts of many of my hearers by the touching song, 'Jephtha's Daughter.' Supposing you, my friends, to be acquainted with the fact, in this case, I ask you, whether it is possible that the father's vow imposed upon him the slightest obligation, to offer his daughter as a burnt offering unto the Lord. These two considerations are enough to satisfy us all that it did not, and that it could not. First, it is a principle of construction, in all compacts, vows, or promises, that they must be construed, and if they bind, at all, that they are binding, in the sense in which the party making them intends that they should be, and supposes that they are, understood by the other party. Now, if the father, in this case, had not the daughter in his mind, when he made the vow, he must have known that the other party, who, in this case, was the 'Searcher of hearts,' could not have understood him to have his daughter in his mind: — in other words, must have known that he never vowed to sacrifice his daughter. Of course he was under no obligation to do it. And, secondly, even had Jephtha, — who lived in the darkest age of Israel's history, and who, though he may have been a good fighter, was yet an illegitimate child, and, as such, was, from his boyhood, made an outcast from his father's house, and got what moral education he had, in a gang of *banditti*, — been so little imbued with moral science, as to have embraced his daughter in the

* Judges xi.

scope of his vow, we know that his offering could not have been accepted of God; first, because no sacrifice could be offered except by the priest, and that, too, where the ark of the Lord was; and, secondly, because, by the laws of Moses, no human sacrifice was allowed on any terms. — (Note 1.)

2. The oath of Herod,* that he would give to the daughter of Herodias whatsoever she should ask, is like the vow of Jephtha, and was void for the same reasons. It could not be legitimately construed into a promise to do an act in itself wrong. The king could not have had the head of John the Baptist in his mind, when he made the promise, nor yet did the party to whom the promise was made so understand him. Nor, even if he had meant that particular gift, and had supposed that he was so understood, would he have laid himself under any obligation to commit the murder, that was asked at his hands.

3. The oath by which more than forty Jews bound — or sought to bind — themselves, that they would neither eat nor drink till they had killed Paul,† is of a different character, in this point, namely, that the contracting parties did understand themselves perfectly, and understood that the act in view was a wrong — a violation of a man's natural, inalienable right to his life. This compact was void, for two reasons. First, because it was to violate a natural right; and, secondly, because it was, what in law is termed a *nudum pactum* — a bare promise, without any *consideration*. 'A consideration, of some sort or other,' says Sir William Blackstone,‡ 'is so absolutely necessary to the forming of a contract, that a *nudum pactum*, or an agreement to do or pay any thing on one side, without any compensation on the other, is totally void in law, and a man cannot be compelled to perform it.'

4. The case brought under our notice in the text, the *covenant* between the chief priests, as one party, and Judas Iscariot as the

* Matthew xiv. 6—11. † Acts xxiii. 21. ‡ Commentaries, II. 445.

other, differs in this point from all those already considered; namely, — it was not understood by either party as a religious act, like that of Jephtha; nor was it exactly an oath, like that of Herod, or like that of the Jews conspiring to kill Paul; nor, like this last, was it without consideration; — for here, the consideration paid and received was, 'thirty pieces of silver.' But does a difference in this point make a difference in the moral character of the act covenanted for? We have seen that a covenant or promise, with *no* consideration, is void. Does a consideration, *worse* than none, make it other than void? 'The civilians hold,' says the great commentator upon English law, already quoted, 'that in all contracts, either express or implied, there must be something given in exchange, something that is mutual and reciprocal. This thing, which is the price or motive of the contract, we call the *consideration:* and it must be a thing *lawful in itself,* or else the contract is *void.*'* In fact, no principle in law is better established than this, that a corrupt or immoral consideration so thoroughly vitiates a contract or covenant, that, as between the parties themselves, it can never be purged. And this is law all over the world. If, in the streets of Rome or Naples, I hire an assassin to do his work, on credit, I am under no obligation to pay him when it is done. If I pay him in advance, he is under no obligation to do the work. No solemnity of form, no amount of consideration, can sanctify the compact, or make it binding upon the soul of either party. Indeed, so universally is this truth admitted, that it has passed into a proverb, that 'a bad promise is better broke than kept.'

If need were, the high authority of our Great Master might be appealed to, in support of the position which has been taken, and which I am endeavoring to defend in this discourse. The Saviour does not indeed mention any specific instance of a vow,

* Blackstone's Commentaries, II. 444.

sinful in itself, and therefore void. But he takes notice of, and pointedly condemns a practice, at the bottom of which lay the same corrupt popular sentiment, which, even in our own day, has done so much to give a practical validity to vows and covenants, in themselves immoral. This was, the practice, on the part of children, of devoting to God, as a religious offering, what they ought to apply to the support of their aged and helpless parents; thus, by their tradition, making of none effect the commands of God, 'Honor thy father and mother,' and 'Whoso curseth father or mother, let him die the death.'—(Note 2.)

This is 'making thorough work.' It is going to the bottom of the whole matter. For, if I may not bind myself, by a vow, to give up even to God, i. e. if I may not, without sin, devote to *pious uses*, that which is my own, when, in so doing, I withhold from another, that to which he has a natural right; much less can I, without sin, bind myself, by a covenant, vow or oath, to give up, to *impious* uses, that which is *not* my own. And, if I cannot bind *myself* to do this, by my own covenant or oath, *a fortiori* another cannot bind me to do it, by covenanting for me that I shall.

This brings us directly upon the case that is now regarded with such intense interest in this community.

A man — a creature of God, made in his image, — a child of God, as much as any one of us is — who *was* a slave in Virginia, and, by the laws of that State, held to be a chattel — a *thing* — has been brought out of his house of bondage, and stands here, upon Massachusetts ground, and breathes Massachusetts air, in sight of the monument that stands on Bunker's Hill, to tell where Massachusetts men poured out their life-blood in the cause of Liberty. He is pursued by a man, who calls himself his *owner*. He is hunted down by slavery's minions in Boston; is seized

and cast into a Boston jail; where, by direction of the Virginian, not even the ministers of Jesus Christ are allowed to 'come unto him;' though, in the humane spirit — nay, by the letter — of Massachusetts law, they are allowed to visit a prisoner, whose hands are reeking with his brother's blood. His pursuer demands that he be given up. Will he be? I suppose, he will. On what ground? By virtue of a *covenant*, which, it is *said*, our fathers made with the Virginian's fathers, that, in such cases, the fugitive *should* be given up.

Here, then, two inquiries present themselves:

First, Is it so?

Secondly, What if it is so?

First, *Is it so?* I place myself, by supposition, upon the judgement-seat, with a religious sense of my responsibleness to God and to man, for the present and all future ages, for time and eternity: and I ask, *Is this so?* In reply, I say, — If it is so, it can be proved to be so, by inspection of the covenant itself. Let me look at it. I am told that it is found in the third clause of the second section of the fourth Article of the Constitution of the United States. I look at the clause, and find that it provides for the surrender of '*persons held to service or labor in one State*, under the laws thereof, escaping into another;' but this is, by no means, conclusive against a man in the position of the party before me. Nay, so far as the letter of the covenant is concerned, it does not raise even a presumption against him. That clause contains a description, which embraces persons or classes totally distinct from slaves; a description, moreover, which, in some of its points, is utterly inapplicable to a slave. It provides for the case of a minor, who escapes from the control and service of his parent; — for that of an apprentice, who escapes from the service due to his master, in consideration of the instruction that his master gives him, in the art or mystery of which he is an apprentice; —

for that of an emigrant from abroad, who is held, by his own contract, to repay, by his service or labor, the money advanced by another for his conveyance to our shores; — nay, even for the case of a minister of the gospel, who is held, personally, to the service of his people, by his own contract; but who deserts his flock, and withdraws into another State, leaving his sheep to the wolves. All these persons are fugitives from justice, — from the demands of natural right, and, therefore, of the moral law; — whereas, the man before me is a fugitive from injustice. Justice has no claims upon him. And, as this clause of the Constitution immediately follows a clause, which provides for the surrender of other fugitives from justice — offenders, that is, against criminal law — I conclude that the intention of the framers of the Constitution was, to provide, in the one clause, for graver, and, in the other, for minor offences against natural law.

I then look still further; and, though I see that the framers of the Constitution have carefully abstained from laying the word *slave* upon the face of that instrument, they have, in another part of it,* enumerated several *other* classes of persons, among which are, 'free persons, including *those bound to service for a term of years*:' — a description, so nearly identical with that in the clause, relied upon in the present case, that, if I construe one part of the instrument by another, as, by the laws of construction, I am bound to do, I have good reason to believe that they meant the same sort of persons, in the one case as in the other. And this inference is fortified by the fact that, in the clause last cited, by common admission, and by practice under the Constitution ever since its adoption, slaves are brought in under the phrase 'other persons.' Slaves, then, in the language of the Constitution, are 'other persons' than such as are described, in one place, as 'persons bound to service for a term of years,' and, in the other,

* Article I. Section 2, ¶3.

as 'persons held to service or labor.' If, then, slaves are other persons than these, they are not these persons.

This construction is favored — nay, it is demonstrably enforced, by the closing words of the clause appealed to, which provides that the persons therein described 'shall be delivered up, on claim of the party to whom such service or labor may be *due*.' Now, all duties or *dues* result, as has been shown, from the natural relations; those in which, according to the laws and ordinances of God, men stand to each other. But the relation of owner and slave is not a natural relation. No duty, then, can result from it. *Nothing can be* DUE *from a slave to his holder.* I ask the party making this claim, by what law, the service of the party claimed is *due* to him? Does he say, 'By the laws of Virginia'? I reply, Those laws are of no force in Massachusetts. Does he say, 'By the laws of the United States'? I answer, Show me the law, declaring that the service or labor of the slave is *due* to his owner.—(Note 3.) Does he say, 'By the Constitution of the United States'? I answer, You beg the question. Does he say, 'By the law of nature'? I answer, By that law your service and labor, or your money, is due to *him*, in consideration of his liberty, which you have wrongfully taken from him, and of the labor and services, which you have wrung from him, for years, and the wages for which 'is, of you, kept back by fraud.' If, therefore, you appeal to the law of nature, you will find that, instead of that man's service and labor being due to you, yours are due to him.

And, once more: I look at the Preamble of the Constitution, the part, that is, which declares its object, its final cause, the purpose for which it was framed. Among other objects, is this — 'to secure the blessings of liberty to ourselves and our posterity.' Now, not only am I bound, as a minister of justice, in all cases of doubtful meaning, to give the language of the law such a con-

struction as shall favor natural right; and in all cases, where the life or liberty of a man is in question, to give it such a construction as shall favor life and liberty; for both which reasons, I must construe the clause, here in question, in favor of the freedom of the party claimed; but I am also bound, to give to every legal instrument such a construction as to make all the parts of it harmonious; so as to give validity to the whole instrument; *ut res magis valeat quam pereat;* and not so to construe one part of it as to make it destroy another. But, if I construe the clause in question so as to give this claimant his demand, I give it a construction which is in direct conflict with the Preamble. I make the means defeat the end; and, instead of making the Constitution, which I have sworn to support, a means of securing the 'blessings of liberty' to the people of the United States, I make it the means of securing the curse of slavery to one-sixth part of those people, and the concomitant curses of it to all the rest. If, then, I give this clause the construction that shall deliver up one of the men before me, as the slave of the other, I violate a fundamental law, observed in the construction of all laws; I make the laws of man paramount to the laws of God, in that I construe this instrument against natural right; and, at the same time, I put one part of it, which provides the means, in direct antagonism with another, which sets forth the end, proposed to be effected by the instrument itself. Judgement must, therefore, be against the man who claims the other as his slave, under this instrument, unless he can show, *aliunde*, that it was the intention of the framers of it to uphold slavery, by the very document, which, they declare, they are framing as a security to freedom; in other words, that, on one page, they go about to break down, what, on another, they declare that they have set about building up.

Can this be shown? There is a strong antecedent probability

against it. The evidence to sustain such a position, therefore, must be proportionably clear and strong. It may be sought for, and it *may* be found, in the reports that have come down to us of the deliberations, debates, and other doings of the Convention that framed the Constitution of the United States. I know not that it is impossible to draw, from any such sources, the evidence which the case demands,; but, till it is produced, if I am told that the Constitution of the United States provides that *slaves*, escaping from a State where they were held as such, and coming into this State, shall be given up, on demand of the owner; and if I am asked, '*Is it not so?*' I reply, In my judgement, *it is not.* But — and this brings us to the other of the two questions just proposed; viz:

Secondly, *What if it is so?* To this I answer: — Even if it *is* so — if it is clearly proved that this *was* the intention and understanding of the framers of the Constitution, then, I say that that provision, being against natural right, and, consequently, in derogation of a higher law, and requiring me to do what God forbids me to do, is of no binding force whatever, but is utterly void. This particular covenant, — for the Constitution of the United States is a covenant, or, rather, a number of covenants, entered into by the People of the United States, each with all the rest, — must come under the law of all human covenants, compacts or agreements, in this, that it is of no binding force, if it is contrary to the laws of God. The consideration that a Constitution is the act of a Convention, and an ordinary law, an act of a Congress; that the former is called the fundamental law, lying at the foundation of the government, or of the Union, does not alter its moral character. There is a government that hath still deeper foundations — foundations, that under-lie those of any human government, and on which, alone, the soul of man can build up for itself an 'everlasting habitation.' Says Sir William Blackstone —

'Man, considered as a creature, must *necessarily* be subject to the laws of his Creator, for he is entirely a dependent being. A being independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct: not, indeed, in every particular, but in all those points wherein his dependence consists. This principle, therefore, has more or less extent and effect, in proportion as the superiority of the one, and the dependence of the other, is greater or less, absolute or limited. And, consequently, as man depends absolutely upon his Maker for every thing, it is necessary that he should, in all points, conform to his Maker's will. This will of his Maker is called "the law of nature."' And 'This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding all over the globe, in all countries, and at all times. *No human laws are of any validity, if contrary to this.*'* Lord Chief Justice Hobart, too, holds that 'even an act of Parliament, made against natural justice, is void in itself, for the laws of nature are immutable, and are *leges legum*, the laws to whose authority all other other laws must give place.'† 'No human laws,' says Blackstone, again,‡ 'should be suffered to contradict these. To instance in the case of murder: — this is expressly forbidden by the divine, and demonstrably by the natural law: and from these prohibitions arises the true unlawfulness of this crime. Those human laws, that annex a punishment to it, do not at all increase its moral guilt, or superadd any fresh obligation in *foro conscientiæ* to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, *we are* BOUND *to transgress that human law, or else we must offend both the natural and the divine.*'

* Blackstone's Commentaries, I. 39, 41.

† Blackstone's Comm. I. p. 41, Christian's Note.—(Note 4.)

‡ Vol. I. p. 43.

This is as true as Truth herself. Nothing on earth can shake this position. Now, then, let us reason from it. 'If *any* human law should allow or enjoin murder, we are bound to transgress that law.' But the Constitution of the United States *is* a human law. Should it enjoin murder, which is, the taking away of a man's life, in violation of a natural or divine law, we are *bound* to transgress that Constitution. Now, the claimant, in this case, says, and for the sake of the argument, I admit, that the Constitution enjoins me to aid him in kidnapping, which is, the taking away of another man's liberty, in violation of a natural or divine law. Then I am *bound* to transgress that Constitution. — All writers on Natural Law admit our Declaration of Independence and many of our State Constitutions expressly declare, that a man's natural right to his liberty is as clear as his natural right to his life. Which is the greater blessing, I am not called upon, in this case, to decide. But I know, that thousands of the noblest of our revolutionary fathers and patriots judged, that life without liberty was not worth the holding: and especially do the words of one of the most eloquent of Virginia's own sons continually ring in my ear. 'Is life so dear, or peace so sweet, as to be purchased at the price of *chains and slavery?* Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!'

If, then, the clause of the Constitution that is appealed to, by the claimant in this case, *does* enjoin it upon me, as a judge, to deliver up the man before me to Virginia's 'chains and slavery,' I feel myself bound by a higher law, — by the authority of the Judge of all judges, — to declare that clause of the Constitution of no binding force before this tribunal, and the judgement of this court is, that the prisoner be discharged.

Before leaving the bench, upon which I have supposed myself to be sitting, I must dispose of a few objections that may be urged, in opposition to the judgement just pronounced.

1. I am reminded that, as a Judge, I have sworn to support the Constitution of the United States.

I reply, first, I swore to support the Constitution according to *my* understanding of it: — not according to yours, or any other man's. And I have already given it as my understanding of the clause in question, that it never was intended by the framers of the instrument to provide for the delivering up of a fugitive *slave;* but, that it was intended to apply to fugitives from justice; that is, the just claims or demands of citizens in another State. And, thus understood, my present judgement does support the Constitution.

And I answer, secondly, — admitting that the present claimant's construction of the clause in question is the true one; — nay, admitting that I so understood it when I took my oath, and that I so understand it now; — it only follows that my *oath* is void. It was taken in sin, and, if performed, would be so in a still greater sin.

> 'T is a great sin to swear unto a sin;
> But greater sin to keep a sinful oath.'*

2. I am told that this part of the Constitution of the United States was a *compromise* between the friends of freedom at the North, and those of slavery, at the South.

Answer, 1. Admit it. It was a *sinful* compromise; a compromise that the delegates, in neither interest, had any right to make; a compromise, on the part of the North, of *moral principle;* a compromise void, for its immorality, even as to the contracting parties themselves; and, if possible, still more void as to all who shall come after them. It was just the compromise that Judas

* Pericles, Prince of Tyre, Act V. Scene 3.

made with the chief priests. Each party was anxious to get something that he had not got. The chief priests would gladly keep their money, and get their victim too: but their victim they must have at all events. Judas would gladly hold fast his integrity; but, at any rate, the chief priests' money he must have. The one party gave up their money to get their victim; the other gave up his integrity and his Saviour, to get the money. This was the compromise, in the one case. In the other case, — admitting the compromise, — both parties were desirous of the Union. The South had her slavery, the North her integrity. But these could not co-exist, if the Union was effected. There was a natural incompatibility between them. One or the other must be laid upon the altar of the Union. *Which* should be given up as the sacrifice? Certainly not our slavery, said the South — let the Union go rather than that. Well, then, said the North, rather than not get the Union, let our integrity go. That was the compromise in the other case: — IF it is a fact, which I do not admit, except for sake of the argument, but on the contrary,

2. And in the second place, I *deny*. For, it is essential to a compromise, between two parties, that something should be given up by each. What was given up by the South? On the construction contended for, she got the Union — a thing much more essential to her than to the North. She held fast to her slavery, and secured a new guaranty to it, by binding the freemen of the North to be her slave-catchers and whippers-in, for all future time!

3. Once more, it is said that this stipulation or provision in favor of southern slavery was a *sine qua non*, a condition without which the slave States would never have come into the Union.

Answer 1st. Then let them have stayed out.

2nd. How is that known? — How *can* it be known? Who is

it that has such a knowledge of the *possible* result of the deliberations of such minds as were in the Convention of the framers of the Constitution of the United States, — deliberations held under the pressing exigencies of that period, — as to enable him to say what result could, and what could not, have been reached, without a sacrifice of moral principle? But, even if were so: — if, instead of a Convention of patriots, it had been a Convention of prophets, that framed the Constitution, and those old seers had distinctly seen that, without a provision that should make the north-men slave-hunters for the South, the present Union would *never* have been formed: — *could* a worse destiny have awaited the *disunited* colonies, under the British crown, than to have, within the life of man, from that moment, as many human beings as then breathed American air, bound in the chains of absolute slavery; and thrice as many more, so much more degraded and debased, than the slaves themselves, as to consent to be converted into *iron*, and worked up into *tools*, — vises and hammers — to fasten on those chains? *A ruinous price does he pay for his civil liberty, who, to purchase it, gives himself up the bond-slave at once of sinners and of sin!*

My friends and brethren, I have supposed myself an incumbent, for a time, of the judgement-seat, before which a fellow man is to be brought, whose condition as a freeman or a slave is to be fixed by my decision. I have given you my judgement, and stand now before you, not a magistrate, but a minister of Jesus Christ; feeling the responsibleness that lies on me as such, to you, to my profession, to my country and to God. I have spoken, and will yet speak, freely, on this subject at this crisis: for I feel as the great statesman of our own city felt, more than twenty years ago, when standing by Plymouth rock, and, speaking of the very work which is now going on in the temples of jus-

tice and the prisons of this city — namely, the catching, chaining and dooming to hopeless slavery of our fellow men — he said, — 'I hear the sound of the hammer. I see the smoke of the furnaces, where manacles and fetters are forged for human limbs. I see the visages of those who, by stealth, and at midnight, labor in this work of hell, foul and dark as may become the artificers of such instruments of misery and torture. * * * I would invoke those who fill the seats of justice, and all who minister at the altar, that they administer the wholesome and necessary severity of the law. I invoke the ministers of religion, that they proclaim its denunciation of these crimes, and add its solemn sanctions to the authority of human laws. If the pulpit be silent, whenever or wherever there may be a sinner, bloody with this guilt, within the hearing of its voice, that pulpit is false to its trust.'* I know that this was spoken with special reference to the foreign slave trade. But I know, too, that, foreign or domestic, sin is sin. I know that God's laws take, within their compass, all latitudes and all longitudes, that they sweep over all seas and all lands alike; regarding the enslaving of a man with no more favor in Boston than in Congo; and pronouncing the panders of this sin no less guilty, when sitting on a judgement-seat, than when standing on a slaver's deck. I know that a man cannot take himself out of the hand of these laws, by swearing that they shall not hold him; — that he cannot shake them off, by his oath that he *will;* and, however it may appear to the moral vision of other men, to mine, the morality that requires and compels me to deliver up a fellow man to chains and torture — to hopeless slavery, if not to death, because others have covenanted for me that I shall do so, and because of my own oath that I will keep that covenant; — is, essentially, the morality of a Judas, who would deliver up the Son of Man to be scourged and cruci-

* Daniel Webster's Oration at Plymouth, 1820.

fied, because he had *covenanted to do so;* — the morality of a Herod, who, *for his oath's sake,* would murder a prophet of God; — the morality of the female fiend of the great English dramatist, who says of herself —

> — 'I have given suck, and know
> How tender 't is, to love the babe that milks me:
> I would, while it was smiling in my face,
> Have pluck'd my nipple from its boneless gums,
> And dash'd the brains out, *had I so but sworn,*
> As you have done to this.'*

I am aware that this is not popular doctrine. I know that the current of public sentiment, in the great thoroughfares of business, and along the channels of commerce, sets strongly against it. I know that in the eyes, of the many — yea, and of the mighty — the Constitution of these United States is supreme; — that it over-rides God's laws, and that *it* must stand, though *they* be trodden under foot. But it is the object of this discourse to lift up God's law, to make it honorable in my hearers' eyes, and to make even the highest of human ordinances to do it homage. Though State may league with State, and millions covenant with millions more, to sustain a wrong, they cannot hold it up. Though hand join in hand, the wicked shall not go unpunished. Even yet, 'Righteousness exalteth a nation, but sin is a reproach to any people.'

I would not, indeed, reproach the noble band of patriots, who framed the Constitution of the United States. I would not willingly believe that they deserve the reproach that is cast upon them by those who hold, that, into the great charter of our country's freedom they covertly inwrought the charter of perpetual slavery, for themselves and their posterity. But, even if they did, — if the proof that they did were ever so overwhelming, —

* Macbeth, Act I. Scene vii.

though I may feel myself afflicted on being compelled to admit it —

> 'And, sad as angels, at a good man's sin,
> Weep to record, and blush to give it in!'

yet, even then, that charter shall have no binding force upon my soul. If, by both the letter and the spirit of that covenant, they meant to bind me to do the slaveholder's work, and minister to his sin, I cannot forget the word of the Lord, which he spake by his servant Moses: 'Thou shalt *not* deliver unto his master the servant which is escaped from his master unto thee.'* Nor can I forget *my* Master's words: 'He loveth father or mother more than me, is not worthy of me;' and I shall regard their covenant, in that particular, as utterly null and void. If, on my heavenward journey, I see even the Constitution of the United States standing in my path, like the visionary ladder of the patriarch, it shall not hinder — it shall help me on my way; for I will mount upward by treading it under my feet.

My brethren, much as we may venerate our fathers, we must venerate still more the rights of man, and his Maker's laws. Though we may reverently cherish their memory, and jealously guard their fame, we must not forget that there is One, whose authority is higher than theirs; and, if it be true that, in the laws which they made for us, they have required us to do any thing, so incompatible with the commads of the Most High, that we *cannot* obey them both, I most seriously ask you, Which *shall* we obey — our dead fathers? or, our LIVING GOD?

* Deuteronomy xxiii. 15.

NOTES.

Note 1. Page 19.

I MAY, I trust, be allowed to throw into a note here, the remarks of Michaelis, in his *Commentary* on the Laws of Moses, (Art. 144, 145,) touching vows in general, of the kind now under consideration; and the vow of Jephtha, in particular.

'Suppose a person to make a vow to God, which involved the commission of a crime; — that he will commit adultery, for instance, or be guilty of regicide, of which the Polish history furnishes an example: — is it to be imagined that the Deity would accept such a vow? None but a miscreant or a blasphemer would venture to say so. Indeed, the very idea were horrible.' * * * 'But a still grosser abuse of the *Cherem*, (or vow to the Lord,) proceeding from imitation of foreign and heathenish practices, we shall probably find in the history of Jephtha. This brave barbarian, an illegitimate child, and without inheritance, who had, from his youth, been a robber, and was now, from being the leader of *banditti*, transformed into a general, had vowed, if he conquered the Ammonites, to make a burnt offering to the Lord of whatever should first come out of his house to meet him, on his return. His vow was so absurd, and, at the same time, so contrary to the Mosaic law, that it could not possibly have been accepted of God, or obligatory. For, what if a dog or an ass had first met him? Could he have offered *it?* By the laws of Moses, no unclean beast could be brought to the altar; nor yet all clean ones; but of quadrupeds only oxen, sheep, and goats. Or, what if a *man* had first met him? Human sacrifices Moses had most strictly prohibited, and described as the abomination of the Canaanites. But Jephtha, who had early been driven from his home, and had grown up to manhood among

banditti, in the land of Tob, might not know much of the laws of Moses, and probably was but a bad Lawyer, and just as bad a Theologian. The neighboring nations used human sacrifices. The Canaanites, especially, are, by Moses and other sacred writers, often accused of this abominable idolatry; of which we find still more in the Greek and Latin authors; and possibly, therefore, Jephtha, when he made the vow, may have thought of being met not merely by a beast, but by a *slave*, whom, of course, he would sacrifice after the heathen* fashion. His words are, "If thou givest the Ammonites into my hands, whatever first cometh forth from my house to meet me, on my happy return from the Ammonites, shall be the Lord's, and I will bring it to him as a burnt offering." Most unfortunately, his only daughter first came out to congratulate him: and the ignorant barbarian, though extremely affected at the sight, was yet so superstitious, and so unacquainted with the religion and laws of his country, as to suppose he could not recall his vow.'

Note 2. Page 21.

Matthew xv. 4 — 6. Mark vii. 9 — 13. For the sake of presenting the iniquity of this practice more distinctly before the mind of the ordinary reader than it is presented by the words of the Evangelists, I subjoin the commentary of Michaelis upon their language.

'It seems that it was then not uncommon for an undutiful and degenerate son, who wanted to be rid of the burden of supporting his parents, and, in his wrath, to turn them adrift upon the wide world, to say to his father and mother *Korban*, or *Be that Korban* (consecrated) which I should appropriate to thy support; that is, *Every thing wherewith I might ever aid or serve thee, and, of course, every thing, which I ought to devote to thy relief, in the days of helpless old age, I here vow unto God.* A most abominable vow, indeed! and one which God would, unquestionably, as little approve or accept as he would, a vow to commit adultery or sodomy. And yet, some of the Pharisees pronounced on such oaths

*We sacrifice slaves, even judicially, after a *Christian* fashion. When shall we cease to be bound by *precedents* from these old barbarians!

this strange decision, that they were absolutely obligatory;* and that the son, who uttered such words, was bound to abstain from contributing, in the smallest article, to the behoof of his parents; because every thing that should have been appropriated, had become consecrated to God, and could no longer be applied to their use, without sacrilege and a breach of his vow. But on this exposition, Christ not only remarked, that it abrogated the fifth commandment, but he likewise added, as a counter doctrine, that Moses, their own legislator, had expressly declared, that *the man who cursed father or mother, deserved to die.* Now it is impossible for a man to curse his parents more effectually than by a vow like this, when he interprets it with such rigor, as to preclude him from doing any thing in future for their benefit. It is not imprecating upon them a curse, in the common style of curses; which but evaporate into air, because neither the *devil* nor the *lightning* is wont to be so obsequious as to obey our wishes, every time we call upon the one to *take*, or the other to *strike dead*, our adversaries: — but it is fulfilling the curse, and making it, to all intents and purposes, effectual.' — *Mich. Comm. on the Laws of Moses, Art.* 293.

Note 3. Page 24.

A clause in the Constitution, providing that a fugitive slave shall be given up, on claim of the party to whom his service or labor may be due, certainly does not prove that, in any particular case, service *is* due from a slave, to the party claiming him. That, if proved at all, must be proved *aliunde;* and, as we have seen, in the discourse, that nothing can *be* due from a slave to his holder, it follows that nothing can be *proved* to be due.

Again, if the pursuer and claimant, here, appeals to the laws of Virginia, and the Court here should acknowledge their authority in Massachusetts, in order to meet the exigencies of the present case; nay, should the claimant prove slavery to exist in

*Just as the official oaths of our magistrates, to support the Constitution of the United States, with the understanding that it requires the giving up of a fugitive slave to bondage, torture, and even death, are pretty generally understood, in our day, to be obligatory. O, when shall our righteousness exceed the righteousness of the Scribes and Pharisees!

Virginia, and to be recognized by her laws; — should he go still farther, and prove that, under those laws, the man claimed was a slave, and *his* slave; that is not enough to show that service or labor is *due* from his slave, to himself as owner. By natural law it is not due. If due at all, even in Virginia, it must be made so by a *declaratory* act of the Virginia Legislature. *Let that act be produced.*

Note 4. Page 27.

I am aware that Mr. Christian differs in opinion, on this point, with Mr. Justice Blackstone, and Chief Justice Hobart. He conceives 'that, in no case whatever, can a Judge oppose his opinion and authority to the clear will and declaration of the Legislature. His province is, to interpret and obey the mandates of the supreme power of the State. And, if an act of Parliament, if we could suppose such a case, should, like the edict of Herod, command all the children under a certain age to be slain, the Judge ought to resign his office, rather than be auxiliary in its execution; but it could only be declared void by the same legislative power by which it was ordained.' But this cannot be true doctrine, especially in this country, where no one doubts the authority of the bench to declare an act of the Legislature void, for that it is against the Constitution. This, as I understand, was lately done by the Supreme Court of the United States, in regard to a part of a law of Congress, touching the very clause of the Constitution now under consideration. That part of an act of Congress was declared void, because in conflict with the Constitution of the United States, — a higher law. On the same principle, the clause of the Constitution now in question, if it *must* be so construed as to demand the delivering up of a fugitive slave, must be declared void, because it is clearly in conflict with a higher law, the CONSTITUTION OF MAN, and the law of the SUPREME POWER OF THE UNIVERSE.

Besides, see to what a consequence the doctrine of Mr. Christian would bring us. If 'it is the province of a Judge to interpret and *obey* the supreme power of the State,' and that supreme power be corrupt, the Judge changes his function, at once; and from a judicial, becomes a ministerial officer. Instead of declaring what the law is, he must do its bidding. Instead of sitting in judgement upon legislative acts, he becomes a tool in the hand of the legislative power; and his function is performed when he has done the legislative will; — the boasted independence of the Judiciary is all a sham; and there is no barrier between the despot and the subject, whether the despot be king ONE, or king MILLION. To be sure, Mr. Christian says that, in case the legislative power should enact the Herod, then, 'the Judge ought to resign his office, rather than be auxiliary to its execution.' Yes, — and give place to one that *would* be auxiliary! Who doubts that a second James, on the throne, could find a second Jeffries, for the bench?